

Investment Act of 1958 shall not be treated as ownership interests until exercised.

(h) An 8(a) concern may not transfer the performance of an 8(a) contract to another concern, absent a waiver or authorized by this section. Such a transfer may be grounds for termination of the concern from the 8(a) program.

[54 FR 34712, Aug. 21, 1989, as amended at 55 FR 34903, Aug. 27, 1990]

**§ 124.318 Exercise of options and modifications.**

(a) *Unpriced Options.* The exercise of an unpriced option is considered to be a new contracting action. As such, if a concern has exited the 8(a) program or is no longer small under the size standard corresponding to the SIC code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised. If, however, the concern is still a Program Participant and is still a small business under the size standard corresponding to the SIC code for the requirement, negotiations to price the option may be entered into provided the estimated fair market price falls below the applicable threshold amount set forth in § 124.311 and, if a fair and reasonable price is negotiated, and it is otherwise consistent with program requirements, the option may be exercised. If the estimated fair market price exceeds the applicable threshold amount set forth in § 124.311, the requirement must be competed among eligible 8(a) concerns. Because this equates to a new contracting action, SBA's concurrence in the exercise of such options is required.

(b) *Priced Options.* A priced option to an 8(a) contract award may be exercised whether the concern that received the award has exited the 8(a) program and whether the concern is no longer small under the size standard corresponding to the SIC Code for the requirement, if to do so is in the best interests of the Government considering the purposes of the 8(a) program.

(c) *Modifications Beyond the Scope.* A modification beyond the scope of the initial 8(a) contract award is considered to be a new contracting action. As such, if a concern has exited the 8(a) program or is no longer small under

the size standard corresponding to the SIC Code for the requirement, the modification cannot be exercised. If, however, the concern is still a Program Participant and is still a small business under the size standard corresponding to the SIC Code for the requirement, the modification may be made provided the estimated fair market price falls below the applicable threshold amount set forth in § 124.311 and other program requirements are met, since the authority exists to enter into a new 8(a) contract to fulfill the requirement. If the estimated fair market price exceeds the applicable threshold amount set forth in § 124.311, the requirement must be competed among eligible 8(a) concerns. Because this equates to a new contracting action, SBA's concurrence in the exercise of such modifications is required.

(d) *Modifications Within the Scope.* A modification within the scope of the initial 8(a) contract award may be exercised whether the concern that received the award has exited the 8(a) program and whether the concern is no longer small under the size standard corresponding to the SIC Code for the requirement.

[54 FR 34712, Aug. 21, 1989; 54 FR 43217, Oct. 23, 1989]

**§ 124.319 Contract termination.**

(a) *Termination for default.* A decision to terminate a specific 8(a) contract for default is made by the procuring agency contracting officer in cooperation with SBA. The contracting officer will advise SBA in writing in advance of his/her intent to terminate the 8(a) contract for default. SBA may provide to the 8(a) concern any program benefits reasonably available in order to assist in preventing termination for default of the contract. SBA will advise the contracting officer of this effort. If, despite the efforts of the SBA, the procuring agency contracting officer believes grounds for termination continue to exist, he/she may terminate the 8(a) contract for default, after consulting with SBA. Such terminations shall be processed in accordance with the FAR, 48 CFR. SBA will have no liability for termination costs or reprocurement costs.

(b) *Termination for convenience.* (1) In cooperation with SBA, the procuring agency contracting officer may terminate an 8(a) contract for convenience any time it is determined to be in the best interest of the government to do so.

(2) Pursuant to §124.317, a contract shall be terminated for convenience if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, unless a waiver is granted pursuant to §124.317. Such terminations shall be processed in accordance with the FAR, 48 CFR.

#### § 124.320 Disputes and appeals.

(a) *Contract disputes generally.* (1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, for purposes of the Disputes Clause of a specific 8(a) contract, the contracting officer is that of the procuring agency. A dispute arising between an 8(a) subcontractor and the procuring agency contracting officer will be decided unilaterally by the procuring agency contracting officer.

(2) For disputes arising out of advance payments or business development expense funds, the contracting officer is that of SBA.

(3) For disputes arising out of construction contracts where SBA has waived bonding pursuant to §124.305, the appropriate contracting officer depends upon the dispute. Where the dispute arises out of the disbursement of funds from the special bank account established to protect persons furnishing materials or labor to the 8(a) concern, the SBA contracting officer shall decide the dispute. In all other disputes, including disputes arising out of the performance of the contract, the procuring agency contracting officer shall decide the dispute.

(4) Decisions by contracting officers (either of SBA or a procuring agency) may be appealed as provided by the Contract Disputes Act of 1978.

(b) *SBA appeals of nonselection or terms and conditions.* (1) The Administrator of SBA may appeal the following matters to the head of the procuring agency:

(i) The decision not to make a particular procurement requirement available for award under the 8(a) program; or

(ii) The terms and conditions of a particular contract to be awarded under the 8(a) program, including selection of an appropriate SIC code.

(2) The SBA must notify the contracting officer of the Administrator's intent to appeal an adverse determination within 5 working days of the SBA's receipt of such determination. The SBA Administrator must file a written request to reconsider the adverse decision with the head of the procuring agency (appeal) within 15 working days of the SBA's notification of intent to appeal.

(3) Upon receipt of the notice of intent to appeal, the procuring agency shall suspend further action regarding the procurement until the head of the procuring agency issues a written decision on the appeal, unless the head of the procuring agency makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision.

(4) If the Administrator's appeal is denied, the procuring agency head shall so notify the SBA, specifying the reasons for the denial. This information shall be made a part of the contract file for the requirement.

(c) An 8(a) Participant selected by the SBA to perform or negotiate an 8(a) contract may request the SBA to protest the procuring agency's estimate of the fair market price for such contract pursuant to paragraph (b) of this section.

#### § 124.321 Joint venture agreements.

(a) *Prerequisites for joint venture agreement.* If approved by the AA/MSB&COD or his/her designee, an 8(a) concern may enter into a joint venture agreement, as defined in §124.100, with another small business concern, whether or not an 8(a) participant, for the purpose of performing a specific 8(a) contract. A joint venture agreement is permissible only when the 8(a) concern lacks the necessary capacity to perform the contract on its own, and when the agreement is fair and equitable and